

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MASSACHUSETTS

BRAUN GmbH,

Plaintiff,

v.

RAYOVAC CORPORATION,

Defendant.

Civil Action No. 03-CV-12428-WGY

PLAINTIFF'S RESPONSE TO DEFENDANT'S MOTION FOR RECONSIDERATION

Braun GmbH ("Braun") opposes Rayovac Corporation's ("Rayovac") Motion for Reconsideration to the extent it seeks to postpone trial beyond the end of October 2005. Braun has supplemented its response to discovery, most recently through the production of emails relating to its products for cleaning dry shavers. While the emails are responsive to Rayovac's broad document requests because those requests seek all documents "relating to" the Braun Cleaning Center products, the emails do not relate to the substantive claims or defenses raised by the parties. Braun's claim of infringement rests on the claim language of U.S. Patent No. 5,711,328 (the "'328 Patent"). The defenses of invalidity and unenforceability rests on the patent and its prosecution history. The emails have nothing to do with these subjects. Indeed, Braun did not have an email system until the late 1990's.¹ Because of the nature of the production – email messages – Braun believes that Rayovac can, if it wishes, expeditiously review them. Braun does not believe any extension is needed, but it does not oppose a request to set the trial date in late October.

¹ Mr. Gebhard Braun, the named inventor, testified that he did not have access to email. Dr. Dietrich Pahl, the unnamed coinventor, had access to email in approximately his last five months at Braun before he retired in 1998. Dr. Pahl was not, however, involved in the prosecution of the '328 Patent. The '328 Patent issued on January 27, 1998.

WHEREFORE, Rayovac's motion should be denied to the extent it seeks to postpone the trial to a date after the end of October 2005.

Braun GmbH

By its attorneys,

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August 25, 2005